

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,313

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Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Aging and Disabilities (DAD) "substantiating" a report of neglect and exploitation of an elderly woman by the petitioner. The petitioner seeks to have the report destroyed and not entered on the Department's "registry".

FINDINGS OF FACT

In August, 1995, G.G., a woman in her eighties was visited by her 90-year-old sister. The sister found G.G. alone in her trailer in a deplorable state. G.G. hadn't bathed and her clothes were worn and soiled with urine and feces. The trailer was unclean and smelled of cat urine and feces. G.G. appeared thin and weak, and hardly any food was in the home. In going through G.G.'s bills the sister discovered that G.G.'s phone had been disconnected for several months, her other utilities were about to be disconnected due to nonpayment, and her health insurance had expired a year previously due to nonpayment.

The sister contacted G.G.'s doctor and arranged for someone to clean up the trailer. The doctor made a home visit and referred the case to the visiting nurses as "dementia" and "possible malnutrition". A referral was also made to DAD for investigation of possible abuse, neglect, and exploitation.

According to G.G.'s sister, G.G. was a meticulous housekeeper who always paid her bills on time. Apparently, G.G.'s mental status had declined significantly in the last year. The sister and most people who knew G.G. assumed that G.G. was being cared for by the petitioner.

The petitioner, who appears to be a man in his twenties, is not a blood relative of G.G., but G.G. had raised him from childhood after his parents were divorced.

G.G. refers to the petitioner as her "grandson", and he apparently had complete access to her home and financial affairs.

The visiting nurse who has attended G.G. since August, 1995, described G.G. as alert but disoriented as to time and place. G.G. still believes that the petitioner lives with her and looks after her. ⁽¹⁾ G.G. has no car and is dependent on others for shopping and other errands. She is incapable of choosing balanced meals, and she is currently dependent on a neighbor and "meals on wheels" to ensure that she eats

properly. She is also incapable of handling her financial affairs.

Following the DAD investigation a guardian was appointed to oversee G.G.'s financial and personal affairs.

The guardian testified that G.G. receives a modest Social Security check (currently \$664 a month) by direct deposit each month that is more than sufficient to pay all her bills, including food, phone and utilities, and the taxes on her trailer--which, according to the guardian, total \$354 a month.

The guardian and DAD have investigated G.G.'s financial records over the last several years. DAD introduced bank records that show that G.G. had a savings account of \$12,516 opened in December, 1990, that until 1994 was used primarily to pay G.G.'s property taxes, which ran from about \$700-750 a year. The records show, however, that between November, 1994, and August 24, 1995, when the account was closed, the petitioner withdrew over \$9,000 from the account. There is no evidence that the petitioner used this money to benefit G.G. The petitioner claimed to DAD that it was a "gift"; although to this day G.G. believes she still has this money.

The investigators also produced the records of G.G.'s checking account. This account received monthly deposits from G.G.'s Social Security checks and was used primarily to pay G.G.'s household expenses. However, between January 14, and June 13, 1995, twenty-eight checks totalling \$1,888 were made out to the petitioner. Although the petitioner maintained to DAD that he spent this money for G.G.'s benefit, he could not account for where or how it was spent. By August, 1995, the account was virtually depleted.

The DAD investigation also revealed that G.G.'s phone had been disconnected in January, 1995, for nonpayment. At the time, there were \$638 in charges for 900 number calls to various sex talk services in other countries. The petitioner did not deny making these calls, and the guardian was able to get the phone company to waive these charges against G.G. and get her phone service restored.

At the hearing in this matter, held on May 22, 1996, the petitioner did not testify in his own behalf, saying that he had been advised by an attorney not to say anything. Neither the petitioner nor the Department, however, is aware of any pending criminal charges against the petitioner. The petitioner also declined the opportunity to cross examine any of the Department's witnesses. ⁽²⁾

Although the petitioner is not a relative of G.G., it is clear that G.G. depended on him for virtually all of her chores, household needs, and financial management. The evidence is clear that the petitioner held himself out to relatives and friends of G.G., as well as to the community, and to G.G., herself, as someone who was overseeing G.G.'s finances, care, and well-being.

The evidence presented at the hearing is clear that in August, 1995, the petitioner had grossly neglected G.G.'s health, safety, and well-being, and that from November, 1994 through August, 1995, he spent over \$11,000 of G.G.'s money for his own use and benefit, leaving G.G. destitute and living in a squalid and dangerous condition.

ORDER

The Department's decision "substantiating" the report of neglect and exploitation by the petitioner

against G.G. is affirmed.

REASONS

The Commissioner of the Department of Aging and Disabilities is required by statute to investigate reports regarding the abuse, neglect, and exploitation of elderly and disabled persons and to keep those reports that are "substantiated" in a "registry" under the name of the perpetrating person. 33 V.S.A. §§ 6906 and 6911. Within 30 days of notification that a report has been substantiated against them individuals can apply to the Human Services Board for a fair hearing on the grounds the report is unsubstantiated. Id § 6906(d). Reports that are found to be unsubstantiated must be destroyed pursuant to 33 V.S.A. § 6906(e) and not entered in the Department's registry.

"Exploitation" and "neglect" are defined by 33 V.S.A. § 6902 as follows:

(7) "Exploitation" means:

(A) Wilfully using, withholding, or disposing of funds or property of an elderly or disabled adult without legal authority for the wrongful profit or advantage of another;

(B) Acquiring possession or control of or an interest in funds or property of an elderly or disabled adult through the use of undue influence, harassment, duress, or fraud;

(C) The act of forcing or compelling an elderly or disabled adult against his or her will to perform services for the profit or advantage of another. . . .

(9) "Neglect" means the lack of subsistence, medical or other care necessary for well-being. . . .

In this case the evidence establishes that the petitioner depleted G.G.'s life savings to his own profit and advantage and left her in a state of destitution, ill-health, and squalor. The petitioner's actions clearly constitute exploitation and neglect as defined by the above statute. DAD's decision substantiating the report of exploitation and neglect of G.G. by the petitioner is, therefore, affirmed.

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1. G.G.'s doctor had made a previous referral to the visiting nurses in January, 1995. At that time, however, G.G. had assured them that the petitioner was caring for her and that she did not need any help. Thus, the visiting nurses did not see G.G. again until August, 1995.

2. The only "evidence" the petitioner submitted was written statements from himself, his mother, and a family friend that he and G.G. had always had a close and loving relationship. Another statement from a store owner stated that the petitioner shopped there for food for G.G. None of the statements, however, addressed any aspect of the evidence submitted by the Department at the hearing.